IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5241 of 2005

Krishnakumar Maruti Pol — Petitioner
Vs.
Sunita Krishnakumar Pol — Respondent

Mr.R.S.Apte with Mr.Vaibhav Patankar for petitioner.

Ms.S.S.Dwivedi i/b. Mr.R.P.Mudholkar for respondent.

CORAM: B.H.MARLAPALLE ,J.

October 19, 2006.

ORAL ORDER:

1. The petitioner-husband has challenged in this petition filed under Article 227 of the Constitution, the order passed by the learned Civil Judge, Senior Division at Thane on 18/6/2005 by which he has been directed to pay an amount of Rs. 3500/- per month to the respondent-wife and daughter - Komal towards the monthly maintenance pending the final decision in Marriage Petition No.165 of 2003 which the petitioner - husband has filed seeking divorce.

2. The parties were heard from time to time and with an intention to bring about the settlement between them efforts were made by the learned counsel for the respective parties. The parties met before me on two-three occasions and daughter - Komal also met me in the chamber. She has indicated her desire

to stay with the mother and at the same time she would like to meet her father as well during vacations or as and when the father calls on her during weekends. The mother and daughter are staying at New Bombay whereas the father is at Kolhapur. He has ancestral landed property in Kolhapur as well as Miraj. The wife claims that he also has in addition movable property like shares, fixed deposits etc. which are the investments from the disposal of ancestral property about two-three years ago.

3. Both the parties have resolved that they must separate by consent and withdraw all the pending cases if any filed against each other. The Consent Terms drafts prepared by the respective parties are placed before me and the only difference of opinion between the parties is regarding the maintenance amount to be paid to the daughter who is a student as at present.

4. The petition is, therefore, disposed off on the following terms agreed between the parties:

(i) Both the parties will jointly make an application in Marriage Petition No.165 of 2003 for

seeking divorce by consent and such an application shall be filed before 30th November 2006 jointly.

(ii) The father has recognised the daughter's share in the ancestral property as his heir and he has agreed that as and when any ancestral property or his own immovable or movable property is disposed off, he shall deposit 50 % (per cent) of the proceeds in the daughter's bank account as intimated to him. It is also agreed that the remaining 50 per cent proceeds would be at the disposal of the father and he may spend the same for himself.

(iii) The respondent-wife has given up her claim for permanent alimony in consideration of the father agreeing to pay monthly maintenance to the daughter till she attains the age of majority, bear her higher educational expenses and recognise the daughter as the half sharer in the property. In addition the father has also agreed that in case the daughter joins any professional courses he will bear the financial liability in terms of fees whereas the other expenses for such professional education shall be met by the wife.

(iv) The father shall pay an amount of Rs.2000/- per month to the daughter by way of monthly maintenance from 1st August 2006 and the said amount will be deposited in her Bank account before the 15th day of the next month, till she attains the age of majority or she starts earning, whichever is earlier. The respondent-wife will not claim any arrears of maintenance pursuant to the impugned order in consideration of the husband agreeing to pay the maintenance amount to the daughter.

The description of the ancestral property of the petitioner-husband is as under:

(1) Property at Kolhapur i.e. Plot No.I/1, Renuka-Villa, Jawahar Nagar, Kolhapur.

(2) Property at Miraj i.e. City Survey Nos.7726 and 9678

(v) It is agreed by the respondent-wife that the 50 per cent amount of the proceeds on disposal of the ancestral property or the petitioner's own property shall not be withdrawn by her except on account of the daughter's marriage or major sickness. However,

the daughter on attaining majority will be free to decide the utility of this amount for her own welfare.

(vi) Even if the petitioner-husband does not dispose off any of the movable or immovable assets, the daughter has not given up her claim to such property and such right is in no way affected by this consent order.

(vii) If there are any pending proceedings before any Court regarding the property disputes and in which the petitioner-husband is a party, the petitioner will take appropriate steps to implead daughter - Komal as an additional party along with him so that she will have the knowledge regarding the pendency of such proceedings, any order / decree including compromises, settlements etc. The daughter will be informed about such orders by the petitioner.

(viii) The custody of the daughter will be with the respondent-mother and the petitioner-father is entitled to meet her on weekends / holidays. If the daughter desires to visit her grandparents at Kolhapur or uncles at Mumbai or any other places, the

respondent-wife will leave it to the choice of the daughter and she will not in any way discourage the daughter from meeting such relations. If the daughter wants to go and stay with the father during vacation, she is free to act as per her desire. This applies even for family functions like marriages and festivals etc.

5. The parties shall apply for withdrawal of the cases filed against each other, if any, before 30th November 2006 and ensure that all such cases are withdrawn.

6. In view of the above Consent Terms, the impugned order stands modified to the extent of payment of Rs.2000/- per month to the daughter from 1st August 2006 and the petition is disposed off accordingly.

(B.H.MARLAPALLE,J.)